

OFFICE OF THE ATTORNEY GENERAL 86-00037



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 834-5150

JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL

H. WARD McMILLAN, JR.
EXECUTIVE ASSISTANT
TO THE ATTORNEY GENERAL

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
EXECUTIVE ASSISTANT

OCT 30 1985

Col. Bryon Prescott, Director
Alabama Department of Public Safety
P. O. Box 1511
Montgomery, AL 36192

Department of Public Safety -
State Troopers - Overtime

Persons taking the oath as a law enforcement officer in the State of Alabama are entitled to benefits allowed by § 36-21-2. Employees of the State of Alabama who are not exempt from the Fair Labor Standards Act (FLSA) are covered by the appropriate provisions of the FLSA.

Dear Col. Prescott:

The Attorney General has received your recent request for an opinion. The first question is whether a state trooper recruit is entitled to the subsistence allowance provided by § 36-21-2, Code of Alabama, 1975. The second question is whether a state trooper recruit is covered by the provisions of § 32-21-4 and § 36-21-5, Code of Alabama, 1975.

It is the opinion of the Attorney General that all those persons who meet the definition of a law enforcement officer of the State of Alabama are entitled to the benefits of § 36-21-2. Those persons who are state law enforcement officers are also entitled to any other benefits allowed by the laws of this State. It is the opinion of the Attorney General that those persons hired into the classification of state trooper should not be denied the benefits of state law enforcement officers by avoiding compliance with § 36-21-6.

Your second question involves the application of §§ 32-21-4 and 36-21-5. These sections provide that state law enforcement officers who are assigned for duty for more than 40 hours during a calendar week are to be paid time and one half time for hours worked in excess of 40 hours per week. Other provisions within each one of these statutes provides for a limit upon the maximum amount of compensable time and method of compensating these state law enforcement officers. Your specific question relates to whether state trooper recruits are covered by the statute. It is the opinion of the Attorney General that it is irrelevant as to the application of these two statutes since, in great part, provisions of § 36-21-4 and § 36-21-5 have been preempted by the application of the Fair Labor Standards Act (FLSA) to state governments by the United States Supreme Court in Garcia v. San Antonio Metropolitan Transit Authority, et al.

We would take this opportunity, however, to point out the relationship between the Alabama statutes providing for the payment of overtime to law enforcement officers and the FLSA. For those persons who are state law enforcement officers, the State law will govern in that the maximum allowable work time is limited to 40 hours during a calendar week. Under the FLSA, a law enforcement officer is allowed to work in excess of 40 hours per week without overtime compensation. Since the State of Alabama has chosen the 40 hour mark as the point at which compensable overtime begins, that 40 hour mark will govern and is not superseded by the FLSA. The Alabama law also allows the state law enforcement officer to elect between payment for overtime or compensatory time. The Fair Labor Standards Act specifically does not allow for the use of compensatory time. Therefore, the FLSA will preempt the state statute that allows for the election of compensatory time in lieu of monetary payment. The state statute also allows for a cap to be placed on the amount of compensable overtime. This, of course, is clearly violative of the provisions of the FLSA. The provisions of the Alabama statutes providing for straight compensatory time for hours worked in excess of 48, for other methods for compensation for hours worked in excess of 54 hours per week are clearly violative of the FLSA. One other point needs to be made when discussing the relationship of the FLSA and overtime provisions found in state law related to law enforcement officers. It is quite possible that

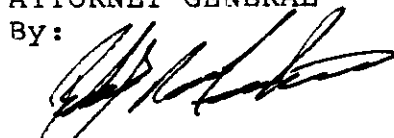
a person who is entitled to overtime compensation under state law would not be entitled to overtime compensation under the FLSA. In those cases, the state law governs and the individual is entitled to overtime compensation calculated on the basis of the state law with no reference to the FLSA.

I hope that we have fully and completely answered your questions, and if we may provide you with any further information, please feel free to contact this office anytime.

Sincerely yours,

CHARLES A. GRADDICK
ATTORNEY GENERAL

By:



RICHARD N. MEADOWS
ASSISTANT ATTORNEY GENERAL

RNM:em